IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.67 of 1989
Date of decision:20.11.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

Sardarni Devinder Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 26.2.1988 in ITA No.140 of 1985, for the assessment year 1976-77:-

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the capital gains arising from the sale of land actually put to agricultural use, wherever located, are not liable to tax?"

The assessee owned agricultural lands within the municipal limits which were acquired during the accounting period relevant for the assessment year 1976-77. On sale of the said lands, a sum of Rs.79,853/- was assessed as capital gains. This was set aside by the Commissioner of Income tax (Appeals) following judgment of the Bombay High Court in **Manubhai A.Sheth and others v. N.D.Nirgadkar, 2nd Income Tax Officer, A-II Ward, Bombay and another,** (1981) 128 ITR 87.

Under Section 10(1) of the Income Tax Act, 1961 (for short, 'the Act'), "agricultural income" is not included in computing total income of a person. "Agricultural income" is defined in Section 2(1A) of the Act. Any profits or gains arising from a transfer of an asset are liable to income

tax. The word "capital asset" has been defined in Section 2(14) of the Act as not including agricultural land in India except the land specified therein. Exception was inserted by Finance Act 1970 w.e.f 1.4.1970 i.e., area comprised in jurisdiction of a municipality with population of not less than 10000 or area within a specified distance not more than 8 kms. from local limits of municipality or contonement board, having regard to extent and scope for urbanisation of that area or other relevant considerations. Inspite of the said amendment, the Bombay high Court in **Munabhai's** case (supra) held that income from transfer of agricultural land being agricultural income was covered by Section 10(1) of the Act. Thereafter, Explanation 1 was added to section 2(1A) of the Act to clarify that agricultural income did not include income from transfer of land, specified in Section 2(14) (iii) of the Act.

In ***Union of India v. S. Muthyam Reddy,*** AIR 1999 SC 3881, the Hon'ble Supreme Court held that effect of explanation was that the income from sale of land was not agricultural income. In para 3, it was observed **:-**

> **"3.** By the Finance Act, 1989, explanation to Section 2 (1-A) was inserted with effect from 1-4-1970 to supersede the view expressed in the order under appeal and several decisions setting out similar ratio. This declaratory amendment having retrospective operation though coming into force during the pendency of this appeal must be given effect to. The said explanation clearly declares that the revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in Section 2(14)(*iii*)(*a*) or (*b*). The upshot of the same is that income derived from sale of such agricultural lands cannot be treated as "agricultural income". Thus, the whole basis of the decision has been lost and, therefore, the order under appeal cannot be sustained and deserves to be set aside."

In **Singhai Rakesh Kumar v. UOI and others,** (2001) 247 ITR 150, validity of explanation declaring income arising out of transfer of agricultural land could not be treated as agricultural income, was upheld. Judgment of the Bombay High Court in **Manubhai's c**ase (supra) was held to have been superseded by the amendment. Contention that "taxes on agricultural income" being covered by Entry 46 of List II, the amendment

was void as it amounted to tax on agricultural income, was rejected. It was held that expression “agricultural income” under Article 366 of the Constitution has the same meaning as defined in the Income tax Act, 1961 and its meaning was not controlled by the definition of “agricultural income” under Section 2(1) of the Indian Income tax Act, 1922.

Following the judgment of Hon'ble the Supreme Court in **Singhai Ramesh Kumar**'s case (supra), the same view was expressed by this Court in ITR Nos.11 to 14 of 1989 decided on 23.11.2004, titled as **Commissioner of Income Tax v. Deepak Kumar Jain.**

Following the above binding precedents, we hold that sale of agricultural lands which were within the municipal limits could be subjected to tax as capital gains.

The question referred is answered in favour of the revenue and against the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 20, 2006
'gs'

(Rajesh Bindal)
Judge